

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

T-MOBILE USA, INC., a Delaware
corporation,

Plaintiff,

v.

HUAWEI DEVICE USA, INC., a Texas
corporation,

Defendant.

Case No. 14-cv-01351-RAJ

**PLAINTIFF T-MOBILE
USA, INC.'S BRIEF IN
SUPPORT OF UNJUST
ENRICHMENT DAMAGES
FOR BREACHES OF
CONTRACT**

1 This Court’s March 30, 2017 Order held that reasonable royalty is an appropriate measure
2 for breach of non-disclosure obligations in Washington, including those in the Handset and
3 Accessory Supply Agreement (“Supply Agreement”) and the Clean Room Letter (“CRL”). *See*
4 Dkt. 400 at 5-6 (citing *Veritas Operating Corp. v. Microsoft Corp.*, 2008 WL 7404617, at *3-4
5 (W.D. Wash. Feb. 26, 2008)). To determine a reasonable royalty, courts routinely account for the
6 scope of the license, including, as relevant here, third-party benefits from the license and the
7 parties’ corporate families. *See Avocent Redmond Corp. v. Rose Electronics*, 2013 WL 8844098,
8 at *3 (W.D. Wash. Mar. 11, 2013) (considering “nature and scope of the license”).¹

9 The contracts at issue here, as well as the facts presented at trial, provide sufficient basis
10 for this Court to allow consideration of Huawei’s affiliates in the reasonable royalty award.

11 *First*, accounting for affiliate use in calculating a reasonable royalty is consistent with the
12 Supply Agreement and CRL. The Supply Agreement prohibits Huawei USA from using T-
13 Mobile’s “confidential, proprietary or secret information...except in performance of [the Supply
14 Agreement]” and provides that Huawei is “liable for any breach of the Agreement,” including
15 those of its employees, Affiliates, or Subcontractors. PTX953 at 32, § 7.7 (emphasis added); *id.*
16 at 39-40, § 9.4.² The Supply Agreement also permits T-Mobile to recover – for breaches of
17 confidentiality or the gross negligence or willful misconduct of Huawei USA – all available
18 contractual remedies under the laws of Washington. *Id.* at 26, §§ 4.3, 4.4. All of these same
19 provisions apply to the CRL, which is governed by the terms and conditions of the Supply
20

21 ¹ *See also StorageCraft Technology Corp. v. Kirby*, 744 F.3d 1183, 1189-90 (10th Cir. 2014) (“[T]he facts all the
22 same permitted the jury to issue an award premised on an understanding that the license Mr. Kirby assumed allowed
23 him the right to share the [licensed information] with a rival and permit (if not compel) its commercial exploitation
24 by that rival.”); *Union Carbide Chems. & Plastics Tech. Corp. v. Shell Oil Co.*, 425 F.3d 1366, 1377 (Fed. Cir.
25 2005) (“[T]he holding company would not enter any negotiation without considering the competitive position of its
corporate parent.”), overruled on other grounds by *Cardiac Pacemakers, Inc. v. St. Jude Med., Inc.*, 576 F.3d 1348
(Fed. Cir. 2009); *Inventio AG v. Thyssenkrupp Elevator Am. Corp.*, 2013 WL 6628007, at *1 (D. Del. Dec. 13,
2013) (“[T]he corporate relationship...would likely have been considered during a licensing negotiation and thus is
an appropriate factor in the expert's analysis of the hypothetical licensing negotiation.”).

26 ² Section 7.7’s provision that Huawei USA “is liable for any breach of the Agreement by any contractor(s) and/or
employee(s) of Seller” certainly includes Huawei affiliate companies like Huawei Device China, who served as the
manufacturer and supplier of Huawei USA’s phones. *See* 4/26/17 Trial Tr. (J. Young) at 42:2-17.

1 Agreement (*see* PTX1258 at 1). The CRL thus incorporates the provisions making Huawei USA
2 liable for breaches by its employees, affiliates, and subcontractors. In addition, the CRL
3 incorporates by reference the Nondisclosure Agreement, which Huawei USA signed “on behalf of
4 itself, its parents, affiliates, subsidiaries, contract manufacturers, parent companies and alliances.”
5 *See* PTX 1258 at 1, 5. As a result, Huawei USA is contractually responsible under the Supply
6 Agreement and CRL for its affiliates’ breaches.

7 *Second*, T-Mobile has presented more than sufficient evidence at trial to justify Huawei
8 USA’s liability for its affiliates’ breaches and damages resulting therefrom, including unjust
9 enrichment to Huawei USA or its corporate affiliates. Indeed, the documentary evidence presented
10 at trial showed that Huawei USA and its affiliates repeatedly and systematically leveraged Huawei
11 USA’s access to T-Mobile’s confidential information³ through these contracts to build Huawei’s
12 own robotic technology for non-T-Mobile carriers. *See, e.g.*, PTX1924 at 6 (“Prachi and Adam
13 have accessed the robot lab....They know how TMO robot work and system info. I asked them to
14 write down the info in detail and then send to R&D.”).⁴ Testimony at trial from Huawei’s own
15 witnesses likewise confirmed that Huawei USA shared T-Mobile’s confidential information with
16 its affiliates, including Huawei Device China, pursuant to the Supply Agreement. *See, e.g.*,
17 4/27/17 Trial Tr. (R. Yao) at 51:1-8, 179:3-10; 5/5/17 Trial Tr. (J. Cui) at 24:17-19, 69:17-22.

18 For these reasons, the contracts and evidence presented at trial show that Huawei USA’s
19 affiliates benefitted from information learned as a result of Huawei USA and its affiliates’ breaches
20 of Huawei USA’s contracts with T-Mobile. Consequently, Huawei USA can be held liable for
21 those breaches and responsible for all legally available contractual remedies.

22 ³ T-Mobile’s confidential information includes its robot lab, which Huawei was only able to access by signing the
23 Clean Room Letter. 4/28/17 Trial Tr. (K. Barnes) at 196:4-12, 197:6-12.

24 ⁴ *See also, e.g.*, PTX1924 at 5 (“Based on our conversation yesterday, you will send us the detailed information
25 for robot test environment and test methodology.”); PTX 1934 at 2 (“The attachment is the pictures of Robot test,
26 including test tools and test procedure.”); PTX1949 at 4 (“Because we can access TMO robot, you guys should fully
27 leverage the advantage.”); PTX1882 at 5 (“I suggested [to] HQ to send an engineer to TMO for a hands-on
experience by playing the robot system. I believe this would give HQ robot team a huge benefit in understanding
TMO robot system from hardware and software, as well as operation.”); PTX1915 at 2 (“For the mechanical arm
issues, go to the laboratory for [reconnaissance or survey or investigation] and obtain measurement data....”).

1 DATED this 12th day of May, 2017.

2 /s/ Steven N. Feldman

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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of May, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

DATED this 12th day of May, 2017.

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